

**SPEED POST**



F. No. 373/227/DBK/2016-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 26/12/22

Order No. 403/22-Cus dated 26-12-2022 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 123/2016 dated 29.09.2016, passed by Commissioner of Customs (Appeals), Cochin.

APPLICANT : M/s. Wilton Weavers Pvt. Ltd., Cherthala.

RESPONDENT : The Commissioner of Customs, Cochin

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**ORDER**

A Revision Application No.373/227/DBK/2016-RA dated 06.12.2016 has been filed by M/s Wilton Weavers Pvt. Ltd., Cherthala (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 123/2016 dated 29.09.2016, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has upheld the Order-in-Original No. 28/2016 dated 13.07.2016, passed by the Deputy Commissioner of Customs (Drawback), Custom House, Cochin.

2. Briefly stated, the Applicants herein had filed Shipping Bill No. 4920084 dated 26.12.2015, under claim of drawback, for export of woven wool carpets and claimed drawback under the drawback serial No. 570201A CTH 9401 and 9403 @ 9.7%. However, the drawback claim of the Applicant was sanctioned @1.9% under drawback sl. No.570299A because the samples were not drawn, as per the provisions of Board's Circular No. 34/95-Cus dated 06.04.1995, which provides for drawal of samples where the drawback amount is more than Rs. 1,00,000/- and admissibility of drawback cannot be decided on visual examination. Subsequently, the Applicant filed a supplementary drawback claim for an amount of Rs. 7,25,863/- along with previous test report which was more than 6 months old. Supplementary claim of the Applicant was rejected by the original authority, vide the above mentioned Order-in-Original dated 13.07.2016. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

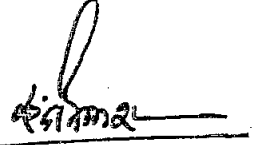
3. The revision application has been filed, mainly, on the grounds that the Board Circulars are instructions to the Officers of the department and are not binding on the assessee; that the Board's Circular provides for drawal of samples where eligibility to drawback cannot be decided by visual examination; that it is not for the assessee to decide whether the drawback is admissible with a visual examination or not; that it was incumbent upon the Officers to follow the instructions given in the said Circular, and the burden of following it cannot be shifted on the assessee.

4. Personal hearing in the matter was held on 23.12.2022, in virtual mode. Ms. Devika, Advocate appeared for the Applicant and reiterated the contents of the revision application. Sh. Ajith Kumar, Appraiser appeared for the Respondent department supported the Order of the lower authorities.

5. Government has examined the matter carefully. At the outset, it is observed that the drawback claim of the Applicant was not processed @ 9.7% but @ 1.9% as the samples were not drawn as per the Board's Circular No.34/1995-Cus dated 06.04.1995. As per the said Board's Circular dated 06.04.1995, "3. III Where the amount of drawback for shipping bill is Rs. 1 lakh and above, a sample should be drawn in all cases where admissibility of the drawback cannot be decided on visual examination of the case." Thus, the Circular requires that in case the departmental officers find that the admissibility of drawback cannot be decided by visual examination, the samples should be drawn for testing. In the instant case, no samples were drawn by the departmental officers. Therefore, this case admits of only one inference, i.e., the officers concerned were of the

opinion that the admissibility to drawback can be decided on visual examination and, hence, sample need not be drawn. Further, even if the department, subsequently, felt that the samples were required to be drawn but were not drawn as per the instructions contained in the Board's Circular dated 06.04.1995, the Applicant cannot be faulted and penalized for such lapse, if any, as it was the duty of the Respondent department to draw the samples. As such, the orders of the lower authorities cannot be sustained.

6. In view of the above, the orders of the lower authorities are set aside and the Revision Application is allowed with consequential relief.



(Sandeep Prakash)

Additional Secretary to the Government of India

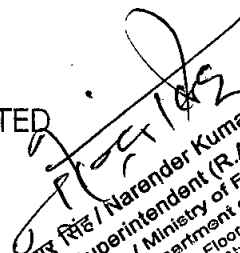
M/s. Wilton Weavers Pvt. Ltd.,  
Kalavamkodam,  
Chethala-688524.

Order No. 403/22-Cus dated 26-12-2022

**Copy to:-**

1. The Commissioner of Customs, Customs House, Willingdon Island, Cochin-682009.
2. The Commissioner of Customs (Appeals), Custom House, Cochin-9.
3. Ms. Devika, Advocate, A5, HIG Avenue, Gandhi Nagar Road, Kadavanthra, Cochin, Kerala-682020.
4. P.S to A.S (RA)
5. Guard File
6.  Spare Copy
7. Notice Board

ATTESTED

  
नरेंद्र कुमार सिंह / Narender Kumar Singh  
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